

Regular Session, 2001

ACT No. 1150

SENATE BILL NO. 1105 (SUBSTITUTE FOR SENATE BILL 812 BY
SENATOR SCHEDLER)

BY SENATOR SCHEDLER

AN ACT

To enact Part XXV of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 22:1131 through 1139, and Part XII of Chapter 11 of Title 23 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 23:1761 through 1768, relative to professional employer organizations; to provide for regulation of insurance operations; to authorize professional employer organizations; to provide benefit plans under certain circumstances; to require workers' compensation insurance coverage on employees; to provide for licensing requirements; to provide for exemptions; to provide for definitions; to provide for the rights and responsibilities of professional employer organizations and their clients relative to each other and their covered employees; to provide for registration requirements and conditions; to provide for renewal and revocation of registration; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part XXV of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, comprised of R.S. 22:1131 through 1139, is hereby enacted to read as follows:

PART XXV. THE LOUISIANA PROFESSIONAL EMPLOYER ACT

Part XXV is all new law.

§1131. Purpose

R.S. 22:1131 is all new law.

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CODING: Words in ~~struck through~~ are deletions from existing law; words **underscored and boldfaced** are additions.

The purpose of this Part is to provide for professional employment services by defining such services, requiring registration of persons or entities providing such services, providing for employee benefits plans and workers' compensation coverage for participants of such services, and providing for enforcement of this Part.

§1132. Definitions

R.S. 22:1132 is all new law.

As used in this Part, the following terms shall have the following definitions:

(1) "Client" means an employer who obtains services or all or a majority of its work force or labor from a professional employer organization.

(2) "Controlling person" means either one of the following:

(a) An officer or director of a corporation, a shareholder holding ten percent or more of the voting stock of a corporation, a general partner of a partnership, or a manager of a limited liability company.

(b) An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of a person or entity through the ownership of voting stock by written contract.

(3) "Experience rating modification" or "EMOD" means a statistical procedure approved by the Louisiana Insurance Rating Commission, as provided for in R.S. 22:1401 et seq., for use in the calculation of a premium rate based on actual claims and expense experience.

(4) "Independent contractor" means a person who, exercising an independent employment or engaging in an independent business

R.S. 22:1132.1 is all new law.

Every professional employer services agreement ("PEO agreement") shall comply with the following requirements:

(1) The agreement shall be in writing and executed by both the PEO and the client.

(2) The agreement shall have an initial term of at least one year or, in the absence of an initial term of one year, the agreement shall clearly indicate that the intent is for the agreement to be on-going rather than temporary.

(3) The agreement shall provide that the client retains control over its business enterprise and exercises direction and control over the covered employees as to the manner and method of work done in furtherance of the client's business, but that authority and responsibility as to other employment matters, including but not limited to hiring, firing, discipline, and compensation are allocated to and shall be between the PEO and the client.

(4) The agreement shall specifically provide for and allocate responsibility between the PEO and the client company with regard to the procurement and maintenance of workers' compensation insurance covering their liability for workers' compensation benefits and group health insurance to or with respect to the employees covered by the professional services agreement and with regard to liability for workers' compensation benefits to the employees covered by the professional services agreement.

(5) The agreement shall state specifically that the agreement is executed between the parties subject to the provisions of this Part and Part XII of Chapter 11 of Title 23 of the Louisiana Revised Statutes of

1950.

§1133. Exemptions; exceptions

R.S. 22:1133 is all new law.

A. The provisions of this Part shall not apply to the following:

(1) An agreement to provide services or the services provided by or through any staffing service or independent contractor, or to any arrangement by which employees are shared by a person with a commonly owned company within the meaning of Sections 414(b) and 414(c) of the Internal Revenue Code of 1986, as amended.

(2) An arrangement in which a person assumes responsibility for the product produced or service performed by such person or his agents, and in which that person retains and exercises primary direction and control over the work performed by the individuals whose services are supplied under such arrangements.

(3) A temporary help arrangement whereby an organization hires its own employees and assigns them to a client to support or supplement the client's workforce in special work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects.

B. The provisions of this Part shall not prohibit a client that is party to a collective bargaining agreement from contracting with a PEO if the union consents to such agreement. No PEO service agreement shall have any effect on collective bargaining agreements that are in existence prior to the PEO arrangement.

C. Nothing in this Part shall exempt any client of a PEO, or any employee covered by a PEO services agreement, from any license requirements imposed under local, state, or federal law.

(1) A covered employee who is licensed, registered, or certified under law is considered to be an employee of the client for purposes of that license, registration, or certification.

(2) No PEO shall engage in the unauthorized practice of an occupation, trade, or profession that is licensed, certified, or otherwise regulated by a governmental entity solely by entering into a professional employer services agreement with a client or assuming the status of employer for purposes specified in the PEO services agreement with respect to the employees of such a client.

§1134. Employee benefit plans

R.S. 22:1134 is all new law.

A. A PEO may sponsor and maintain employee benefits plans in which its clients have the option to participate. Every employee benefit plan shall comply with applicable state and federal laws.

B.(1) At least ten days before the initiation of coverage under any policy of insurance issued in connection with an employee health benefit plan, the PEO shall submit the policy to the department for its review and authorization for issuance in this state.

(2) If a client participates in such a health benefit plan the client shall submit an application for coverage, on forms provided by an insurer authorized to transact business in this state and the client's employees shall be considered as a separate group for purposes of eligibility, rating, and coverage.

§1135. Workers' compensation insurance

R.S. 22:1135 is all new law.

A. If the PEO service agreement provides for the procurement and maintenance of state or federal workers' compensation insurance,

covering the liability of the client, the insurance covering such liability shall be placed with an insurer authorized to transact business in this state and such coverage shall include a plan of multiple coordinated policies in place. Each plan shall comply with the following requirements:

(1) A separate policy shall be issued to each client, covering the client's compensation liability with respect to each of its employees, whether or not covered by the PEO services agreement.

(2) Payroll for all of the client's employees shall be assigned to the policy in the name of the client.

(3) All policies shall be written by an admitted insurer and shall be coordinated and have a common expiration date.

(4) Each individual client policy shall apply the rates, rules, classifications, rating plans and audit procedures approved by the Louisiana Insurance Rating Commission as provided in R.S. 22:1401, et seq. The experience modification factor shall be calculated using the experience of the client, which factor shall survive termination of the PEO contract, and shall, upon termination of the professional services agreement, be reported separately in accordance with the applicable rating plan.

(5) The PEO may collect from its clients and remit to the carrier premiums on its own and its clients' policies.

B.(1) If coverage for workers' compensation liability is secured, both the PEO and the client shall maintain appropriate evidence of workers' compensation insurance.

(2) Each PEO shall comply with the insurer's reasonable and lawful requests for information pertinent to the insurance, including the

name and federal identification number of each client, classification codes, payrolls, information, loss data, and jurisdictions with exposure, and shall submit appropriate audits of its operations. Failure of a PEO to comply with the provisions of this Paragraph, after a reasonable opportunity to cure any deficiency, shall be grounds for cancellation of the workers' compensation insurance policy.

C. Nothing in this Section shall limit the PEO's and client's ability to specify in the PEO services agreement how liability for workers' compensation benefits to employees covered by the PEO services agreement will be apportioned between them. Each shall have the benefit of the exclusive remedy defense under R.S. 23:1032. No PEO shall have the benefit of such exclusive remedy defense by virtue merely of its PEO status or relationship to its clients or to the covered employees in case a covered employee of one client of the PEO injures a covered employee or employee of another client of the same PEO; however, the PEO may maintain the exclusive remedy defense if it is otherwise available under law due to the relationship between the two clients, independent of their relationships with the PEO.

D. Nothing in this Section shall prevent a client from securing a policy of workers' compensation insurance from an insurer authorized to transact business in this state which is outside of the PEO services agreement.

§1136. Licensure

R.S. 22:1136 is all new law.

Every PEO engaged in the business of soliciting, selling, or negotiating policies of insurance shall be properly licensed in accordance with this Title. The PEO shall not hold itself out as an

insurer, insurance broker, or insurance agent; offer any insurance service; or conduct any business that is defined or regulated in this Title unless appropriately licensed. No representative of a PEO shall make any comparative analysis or render advice regarding any insurance policy or coverage, including any health benefit plan or workers' compensation insurance, during the solicitation or sale of a professional employer services agreement or otherwise, unless properly licensed as an insurance agent or insurance broker in accordance with this Title.

§1137. Registration

R.S. 22:1137 is all new law.

Each person operating in this state as a PEO shall have on file with the department a statement, on a form to be prescribed by the department, of its name, its registered address, the address of its principal business establishments inside and outside this state, its telephone and facsimile number, the form of business entity it has assumed, the state of its incorporation or other organization, the name of a principal contact person, and the names and addresses of all controlling persons. Such statements shall be renewed annually. The department shall maintain such statements and make them available to the public as any other public document. The department may charge such a fee on submission of such statements as is necessary to cover its costs in receiving and maintaining them, not to exceed five hundred dollars for the initial registration and three hundred dollars for annual renewals.

§1138. Enforcement

R.S. 22:1138 is all new law.

The provisions of this Part may be enforced by the

commissioner pursuant to R.S. 22:1215 through 1217.1 and other applicable provisions of this Title.

§1139. Implementation

R.S. 22:1139 is all new law.

The department may promulgate such rules and regulations, pursuant to the Administrative Procedure Act, as are necessary to implement this Part.

Section 2. Part XII of Chapter 11 of Title 23 of the Louisiana Revised Statutes of 1950, comprised of R.S. 23:1761 through 1768, is hereby enacted to read as follows:

PART XII. PROFESSIONAL EMPLOYER ORGANIZATIONS

Part XII is all new law.

§1761. Definitions

R.S. 23:1761 is all new law.

As used in this Chapter, the following terms shall have the meanings hereinafter ascribed to them:

(1) "Client" means an employer who obtains services on all or a majority of its work force or labor from a professional employer organization.

(2) "Covered employee" means a person having a co-employment relationship with both a PEO and the PEO's client pursuant to an executed PEO service agreement.

(3) "Co-employment relationship" means an employment relationship whereby both the client and the PEO have an employer/employee relationship with the covered employee and the direction and control of the covered employee is shared by or allocated between the client and the PEO pursuant to a PEO service agreement.

(4) "Experience rating" shall have the meaning assigned to it under the Employment Security Law.

(5) "Independent contractor" means a person who, for the purposes of the Employment Security Law, satisfies the exception provided in R.S. 23:1472(12)(E).

(6) "Person" means an individual, association, partnership, corporation, limited liability company, or other entity.

(7) "Professional Employer Organization" or "PEO" means any person that offers professional employer services pursuant to a professional employer services agreement with a client, including but not limited to administrative services organizations and employee leasing organizations that provide services pursuant to a PEO agreement. Such PEO shall be considered an employer for purposes of this Chapter.

(8) "Professional employer services agreement" or "PEO services agreement" means an agreement between a professional employer organization and a client pursuant to which the professional employer organization will upon execution of the agreement co-employ a substantial part of a client's workforce and undertake specified responsibilities as an employer for all covered employees that are co-employed by the agreement between the professional employer organization and the client.

(9) "Staffing service" means any person, other than a professional employer organization, that hires its own employees and assigns them to a client to support or supplement the client's workforce. It includes temporary staffing services and leasing companies that supply employees to clients in special work situations such as

employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects.

(10) "Temporary employee" is an employee, whether called temporary employee or leased employee, who is recruited by a staffing service or employee leasing company, is assigned to a client by such service or company, and is expected to return to the staffing service or leasing company for reassignment at the end of duties at the client company.

(11) "UI tax account" means a state unemployment tax account.

§1762. Exemptions and exceptions

R.S. 23:1762 is all new law.

A. This Part shall not apply to the following:

(1) Labor organizations as defined by the National Labor Relations Act.

(2) Staffing services.

(3) Temporary employment arrangements.

(4) Independent contractors.

(5) Political subdivisions of the state or the United States and any of their programs or agencies.

B.(1) This Part shall not prohibit a client who is party to a collective bargaining agreement from contracting with a PEO, if the union consents to such agreement.

(2) A PEO arrangement shall have no effect on collective bargaining agreements that are in existence prior to the PEO arrangement.

C. This Part shall not apply to contracts for services where no co-employment relationship exists and neither party represents such

services as being PEO services.

D.(1) This Part does not exempt a client of a registered PEO or a covered employee from any other license requirements imposed under local, state, or federal law.

(2) A covered employee who is licensed, registered, or certified under law is considered to be an employee of the client for purposes of that license, registration, or certification.

(3) A registered PEO is not engaged in the unauthorized practice of an occupation, trade, or profession that is licensed, certified, or otherwise regulated by a governmental entity solely by entering into a professional employer services agreement with a client or co-employing an employee of such a client.

§1763. Rights and responsibilities

R.S. 23:1763 is all new law.

A. For purposes of this Chapter, as long as the professional employer services agreement between the PEO and the client remains in force, a PEO shall be deemed an employer of the covered employees to the extent and for the purposes enumerated in the professional employer services agreement. However, the PEO shall have the following employer rights and responsibilities with regard to such covered employees in any case:

(1) It shall pay the wages of covered employees from its own accounts.

(2) It shall have the responsibility for the withholding and remittance of payroll-related taxes of the covered employees from its own accounts.

(3) It shall pay federal unemployment taxes as required by

federal unemployment laws.

(4) It shall have the right to sponsor and maintain fully insured employee benefit and welfare plans for covered employees. Nothing in this Part shall prevent a client from including covered employees in a client benefit program or plan or shall prevent covered employees from participating in such a program or plan.

~~_____~~ B.(1) A PEO shall be liable for state unemployment taxes for wages paid by the PEO to covered employees but only for the duration of the PEO services agreement applicable to such employees. The PEO shall collect federal and state unemployment taxes. The PEO shall remit all collected federal unemployment taxes to the United States Department of Treasury, Internal Revenue Service and shall remit all collected state unemployment taxes to the Department of Labor. A PEO shall be required to provide a client with an invoice detailing the services provided which shall include an itemization of the actual federal and state unemployment taxes owed and paid on behalf of the covered employees, as well as any amount the PEO charges for such service.

(2) A PEO shall keep separate records and submit separate quarterly contribution and wage reports for each of its client entities using the client's account number and unemployment contribution rate.

(3) The PEO and the client shall be jointly and severally liable for any unpaid contributions, interest, and penalties due for Louisiana unemployment taxes attributable to wages for services performed for the client by covered employees.

~~_____~~ (4) A PEO client shall be released from joint and several liability under Paragraph (B)(3) and the client shall be released from

the separate reporting and contribution rate requirements imposed under Paragraph (B)(2) upon the posting and continued maintenance by the PEO of a surety bond issued by a corporate surety authorized to do business in the state in the amount of one hundred thousand dollars to ensure prompt payment of contributions, interest, and penalties for which the PEO is or may become liable. After three years the bond shall be adjusted in accordance with rules promulgated by the Department of Labor.

(5) The PEO shall designate and identify each client and covered employees thereof for each calendar quarter with the filing of quarterly wage reports with the Department of Labor.

(6)(a) No transfer of experience rating will be approved between any client and the PEO unless it is determined by the administrator that an acquisition of assets has occurred. Co-employment of a client's employees without an acquisition of the business and its other assets will not of itself constitute an acquisition for purposes of the transfer of experience rating.

(b) However, the experience rating will transfer between one PEO to another when it is determined by the administrator that an acquisition of assets has occurred, even if such acquisition is only of a clearly segregable and identifiable or a substantial portion of the first PEO's labor force.

(7) If a professional employer services agreement is terminated and, within thirty days, the client engages the services of another PEO, both the terminated or terminating PEO and the new PEO will notify the unemployment insurance tax section of the Department of Labor directly within thirty days, and no other action need be taken.

(8) If a professional employer service agreement is terminated and the client resumes sole employment of previously covered employees, any inactive unemployment insurance account previously held by the client will be reopened under its previously existing experience rating. No transfer of experience rating shall be made from the PEO. If there is no previous account number or the account lies dormant for seven years, a new account will be established in accordance with law. If there is no existing experience rating, one will be established pursuant to state law for new businesses.

§1764. Registration

R.S. 23:1764 is all new law.

A. Except as provided in R.S. 23:1762(D), no person shall engage in the business of or act as a PEO or provide, or offer to provide, PEO services, unless it is validly registered as is provided for in this Part.

B. No person shall be validly registered if he fails to provide to the administrator all of the information required by this Part, or if he provides false or misleading information.

C. The administrator may bring an action to enjoin or restrain any person who is in violation of the provisions of this Section.

§1765. Application for registration

R.S. 23:1765 is all new law.

A. Every applicant for an initial and a renewal PEO registration shall file with the administrator a completed application on a form prescribed by rules and regulations of the administrator and shall remit an annual registration fee. Renewal applications and fees remitted later than thirty days after the PEO's anniversary date may be subject to a

penalty not to exceed five hundred dollars.

B. The contents of a PEO application shall include:

(1) Identification of applicant:

(a) If an individual, the name and address of the individual.

Any such applicant shall have reached the full age of majority.

(b) If a partnership, the applicant shall state the names and home addresses of all controlling persons in the partnership. If a limited partnership, the partnership shall also produce a certified copy of its certificate of limited partnership.

(c) If a corporation, the applicant shall state the names and home addresses of all officers and directors and of all other controlling persons of the corporation. The applicant shall include a certified copy of its articles of incorporation.

(d) If a limited liability company, the applicant shall state the names and home addresses of all members and indicate which members are managers or controlling persons of the company. The applicant shall include a copy of the articles of organization and any operating agreement of the type defined in R.S. 12:1301(16). The limited liability company shall also produce a certified copy of its certificate of organization.

(2) The address of its principal place of business in this state and the addresses of any other offices within this state through which the applicant intends to conduct business as a PEO.

(3) Such other information which the administrator deems necessary and requires by rule or regulation to establish that the applicant or the controlling persons thereof are of good moral character, business integrity, and financial responsibility.

(4) A verification of the information contained in the application by an officer or authorized representative of the applicant in a form prescribed by the administrator.

C. The administrator shall promulgate rules and regulations for registration and renewal fees not to exceed those reasonably necessary to administer the registration and renewal requirements of this Part.

§1766. Rejection of application for registration

R.S. 23:1766 is all new law.

A. The administrator may reject an application for registration under any of the following conditions:

(1) The application is not fully completed, properly executed, or is otherwise deficient on its face.

(2) The documents required to supplement the application are not included in the application packet.

(3) The applicant, or any person named in the application, has made a material misrepresentation in the application.

B. The administrator shall furnish the applicant with a written statement of the reason for rejecting or revoking an application. The applicant may request a hearing before the administrator within thirty days of receipt of the written statement.

§1767. Terms of registration; renewal; revocation

R.S. 23:1767 is all new law.

A. Any registration issued hereunder shall remain in force for one year from the date of the issuance of registration unless revoked by the administrator for good cause.

B. Thirty days prior to the expiration of its registration, any registrant desiring to continue to offer or provide PEO services may

submit an application for renewal of registration on a form and with such supplemental material as may be prescribed by the administrator.

C. A registration may be revoked or an application for renewal of registration may be rejected by the administrator for any of the grounds enumerated in R.S. 23:1766(A) or for a willful failure of the PEO to comply with the provisions of this Chapter.

D. A PEO shall have a right to an administrative hearing before an objective party prior to the cancellation or nonrenewal of its registration. The administrator shall furnish the applicant with a written statement of the reason for revoking a registration or rejecting an application. The applicant may request a hearing before the administrator within thirty days of receipt of the written statement.

§1768. Professional employer services agreement requirements

R.S. 23:1768 is all new law.

Every professional employer services agreement ("PEO agreement") shall comply with the following requirements:

(1) The agreement shall be in writing and executed by both the PEO and the client.

(2) The agreement shall have an initial term of at least one year or, in the absence of an initial term of one year, the agreement shall clearly indicate that the intent is for the agreement to be on-going rather than temporary.

(3) The agreement shall provide that the client retains control over its business enterprise and exercises direction and control over the covered employees as to the manner and method of work done in furtherance of the client's business, but that authority and responsibility as to other employment matters, including but not limited to, hiring,

firing, discipline and compensation are allocated to and shall be between the PEO and the client.

(4) The agreement shall specifically provide for and allocate responsibility between the PEO and the client company with regard to the procurement and maintenance of workers' compensation insurance covering their liability for workers' compensation benefits and group health insurance to or with respect to the employees covered by the professional services agreement.

(5) The agreement shall state specifically that the agreement is executed between the parties subject to the provisions of this Part.

Section 3 is all new law.

Section 3. A. Each PEO operating in the state prior to or on September 1, 2001, shall submit a registration form to the Department of Insurance by October 30, 2001, and to the Department of Labor by January 31, 2002, or within thirty days after the registration form is made available by the respective departments, whichever is later.

B. Any PEO which commences operations after September 1, 2001, shall submit a completed registration form to the Department of Insurance and the Department of Labor in advance of commencing operation in this state or within thirty days after such form is made available by the respective departments, whichever is later.

C. The provisions of R.S. 22:1135, relative to guidelines for workers' compensation insurance, shall become effective on January 1, 2002 and shall apply to workers' compensation insurance policies executed or renewed after January 1, 2002; however, the commissioner may delay implementation of the provisions of R.S. 22:1135 for a period of not more than ninety days upon a showing of good cause.

D. The provisions of Section 2 shall become effective on January 1, 2002.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____